

10/582428

AP20 Rec'd PCT/PTO 08 JUN 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE AS  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

In re Application of: DVM Pharmaceuticals  
International Appln. No. PCT/US04/41463  
International Filing Date: 10 December 2004 (10.12.2004)  
Priority Date: 11 December 2003 (11.12.2003)  
Title: MEDICAMENT APPLICATION DEVICE  
Authorized Officer: Catherine S. Williams  
Docket No. 56327-358 (TVAL-218PC)

Certificate of Facsimile Transmission

I hereby certify that this correspondence is being facsimile transmitted to: Mail Stop PCT, Commissioner for Patents,  
Facsimile No. (571) 273-3201, Alexandria, VA 22313-1450, Attention: IPEA/US, on the date set forth below:

10/11/05  
October 11, 2005

*Erin M. Olson*  
Erin M. Olson

Mail Stop PCT  
Commissioner for Patents  
Facsimile No. (703) 305-3230  
Alexandria, VA 22313-1450  
Attention: IPEA/US

RESPONSE TO WRITTEN OPINION AND  
AMENDMENT TO THE CLAIMS UNDER PCT ARTICLE 34

Introductory Comments

This paper is responsive to the Written Opinion dated 29 April 2005 for the  
above-referenced international application.

A Demand for international preliminary examination is submitted with this paper.  
Please amend the application as follows under PCT Article 34. A replacement page  
indicating the cancellation of claim 14 is attached hereto, in accordance with PCT Rule  
66.8(a).

IN THE CLAIMS:

Claim 14. [Cancelled]

**REMARKS**

There are currently 14 claims pending in the subject application. Of these 14 claims, 4 claims (i.e., claims 1, 10, 13 and 14) are independent claims and 10 claims (i.e., claim 2-9, and 11-12) are dependant claims. Claim 14 is canceled by the present amendment.

In the Written Opinion, claims 3-5 were stated to have met the novelty, inventive step and industrial applicability criteria of PCT Article 33.

In the Written Opinion, claims 1-2, 6-7, and 9-14 were stated to lack novelty under PCT Article 33(2) as being anticipated by Yannaci et al (U.S. Patent No.: 6,210,057; hereinafter Yannaci). Further in the Written Opinion, claims 1-2 and 6-14 were listed as lacking an inventive step, with the Authorized Officer stating specifically that claim 8 lacks an inventive step under PCT Article 33(3) as being obvious over Yannaci. Issue is taken with those positions. Claim 14 has been cancelled.

Independent claim 1 defines a medicament application device adapted for using with a medicament container, said medicament container having an opening for dispensing medicament contained in said container to the device, said medicament application device comprising: a plate defining at least one hole therethrough; a connector extending from a bottom side of said plate to a proximal end, said connector proximal end being adapted for connecting to said opening of said container, wherein said connector defines an inner channel therethrough, said inner channel being in fluid communication with said opening of said container and said hole of said plate; and a medicament applicator detachably attached to a top side of said plate, said medicament applicator being made from a fluid permeable material. [Emphasis added] Yannaci does not teach or suggest a medicament applicator detachably attached to a top side of the plate, said medicament applicator being made from a fluid permeable material. Accordingly, Applicant submits that claim 1 and those depending from it, e.g., claim 8, are novel and involve an inventive step over Yannaci. Because claims 10-13 are directed

Applicant: DVM Pharmaceuticals, Inc.  
Int. App. No. PCT/US04/41463

**AP20 Rec'd PCT/PTO 08 JUN 2006**

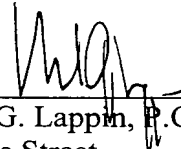
to kits that include each include a medicament application device according to claim 1, they are believed to be likewise novel and include an inventive step over Yannaci.

Accordingly, the Applicant respectfully requests the issuance of a favorable International Preliminary Examination Report characterizing pending claims 1-13 as meeting the novelty, inventive step, and industrial applicability criteria of PCT Article 33.

No new matter has been added. No additional costs are believed to be due in connection with the filing of this paper. However, the Commissioner is hereby authorized to charge any additional fees, or credit any overpayment, to our Deposit Account No. 50-1133.

Respectfully submitted,  
McDermott, Will & Emery

Date: 11 OCT 2005

  
\_\_\_\_\_  
Mark, G. Lappin, P.C.  
28 State Street  
Boston, MA 02109  
V: (617) 535-4000  
F: (617) 535-3800

10/582428  
AP20 Rec'd PCT/PTO 08 JUN 2006

REPLACEMENT SHEET

14. (Cancelled) ~~A medicament application device adapted for using with a medicament container, said medicament container having an opening for dispensing medicament contained in said container to the device, said medicament application device comprising:~~

~~—— a plate defining at least one hole through said plate;~~

~~—— a connector extending from a bottom side of said plate to a proximal end, said connector proximal end being adapted for connecting to said opening of said container, wherein said connector defines an inner channel therethrough, said inner channel being in fluid communication with said opening of said container and said hole of said plate;~~  
~~and~~

~~—— bristles extending from a top side of said plate.~~

The demand must be filed directly with the competent International Preliminary Examining Authority or, if two or more Authorities are competent, with the one chosen by the applicant. The full name or two-letter code of that Authority may be indicated by the applicant on the line below:

IPEA/ US

# PCT

## CHAPTER II

### DEMAND

under Article 31 of the Patent Cooperation Treaty:

The undersigned requests that the international application specified below be the subject of international preliminary examination according to the Patent Cooperation Treaty.

For International Preliminary Examining Authority use only	
Identification of IPEA	Date of receipt of DEMAND
<b>Box No. I IDENTIFICATION OF THE INTERNATIONAL APPLICATION</b>	
Applicant's or agent's file reference IVAL-218PC (56327-358)	
International application No. PCT/US04/41463	International filing date (day/month/year) 10 December 2004 ( 10.12.04 )
(Earliest) Priority date (day/month/year) 11 December 2003 ( 11.12.03 )	
Title of invention MEDICAMENT APPLICATION DEVICE	
<b>Box No. II APPLICANT(S)</b>	
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
DVM PHARMACEUTICALS, INC. 50 NW 169th Street Miami, Florida 33162 United States of America	
Telephone No.	
Facsimile No.	
Teleprinter No.	
Applicant's registration No. with the Office	
State (that is, country) of nationality: US	State (that is, country) of residence: US
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
KWOCHKA, Kenneth W. 1063 W. 47th Street Miami Beach, FL 33140 United States of America	
State (that is, country) of nationality: US	State (that is, country) of residence: US
Name and address: (Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)	
State (that is, country) of nationality:	State (that is, country) of residence:
<input type="checkbox"/> Further applicants are indicated on a continuation sheet.	

**Box No. III AGENT OR COMMON REPRESENTATIVE; OR ADDRESS FOR CORRESPONDENCE**The following person is ☒ agent ☐ common representativeand ☒ has been appointed earlier and represents the applicant(s) also for international preliminary examination.☐ is hereby appointed and any earlier appointment of (an) agent(s)/common representative is hereby revoked.☐ is hereby appointed, specifically for the procedure before the International Preliminary Examining Authority, in addition to the agent(s)/common representative appointed earlier.Name and address: *(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)*LAPPIN, Mark G.  
McDermott Will & Emery LLP  
28 State Street  
Boston, MA 02109

Telephone No.

617-535-4000

Facsimile No.

617-535-3800

Teleprinter No.

Agent's registration No. with the Office  
26,618☐ **Address for correspondence:** Mark this check-box where no agent or common representative is/has been appointed and the space above is used instead to indicate a special address to which correspondence should be sent.**Box No. IV BASIS FOR INTERNATIONAL PRELIMINARY EXAMINATION****Statement concerning amendments:\***

1. The applicant wishes the international preliminary examination to start on the basis of:

☐ the international application as originally filedthe description ☒ as originally filed☐ as amended under Article 34the claims ☐ as originally filed☐ as amended under Article 19 (together with any accompanying statement)☒ as amended under Article 34the drawings ☒ as originally filed☐ as amended under Article 342. ☐ The applicant wishes any amendment to the claims under Article 19 to be considered as reversed.3. ☐ Where the IPEA wishes to start the international preliminary examination at the same time as the international search in accordance with Rule 69.1(b), the applicant requests the IPEA to postpone the start of the international preliminary examination until the expiration of the applicable time limit under Rule 69.1(d).4. ☐ The applicant expressly wishes the international preliminary examination to start earlier than at the expiration of the applicable time limit under Rule 54bis.1(a).

\* Where no check-box is marked, international preliminary examination will start on the basis of the international application as originally filed or, where a copy of amendments to the claims under Article 19 and/or amendments of the international application under Article 34 are received by the International Preliminary Examining Authority before it has begun to draw up a written opinion or the international preliminary examination report, as so amended.

Language for the purposes of international preliminary examination: English☒ which is the language in which the international application was filed.☐ which is the language of a translation furnished for the purposes of international search.☐ which is the language of publication of the international application.☐ which is the language of the translation (to be) furnished for the purposes of international preliminary examination.**Box No. V ELECTION OF STATES**

The filing of this demand constitutes the election of all Contracting States which are designated and are bound by Chapter II of the PCT.

**Box No. VI CHECK LIST**

The demand is accompanied by the following elements, in the language referred to in Box No. IV, for the purposes of international preliminary examination:

- |  |   |       |        |
|--|---|-------|--------|
| 1. translation of international application                              | : | _____ | sheets |
| 2. amendments under Article 34   | : | 1     | sheets |
| 3. copy (or, where required, translation) of amendments under Article 19 | : | _____ | sheets |
| 4. copy (or, where required, translation) of statement under Article 19  | : | _____ | sheets |
| 5. letter  | : | _____ | sheets |
| 6. other ( <i>specify</i> )  | : | _____ | sheets |

For International Preliminary Examining Authority use only

- | received                 | not received             |
|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

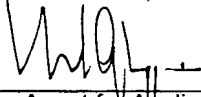
The demand is also accompanied by the item(s) marked below:

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> fee calculation sheet                             | 5. <input type="checkbox"/> statement explaining lack of signature                            |
| 2. <input type="checkbox"/> original separate power of attorney                          | 6. <input type="checkbox"/> sequence listing in electronic form                               |
| 3. <input type="checkbox"/> original general power of attorney                           | 7. <input type="checkbox"/> tables in electronic form related to a sequence listing           |
| 4. <input type="checkbox"/> copy of general power of attorney; reference number, if any: | 8. <input checked="" type="checkbox"/> other ( <i>specify</i> ): Response to Written Opinion; |

**Box No. VII SIGNATURE OF APPLICANT, AGENT OR COMMON REPRESENTATIVE**

Next to each signature, indicate the name of the person signing and the capacity in which the person signs (if such capacity is not obvious from reading the demand).

DVM PHARMACEUTICALS, INC.



Mark G. Lappin, Agent for Applicant

**For International Preliminary Examining Authority use only**

1. Date of actual receipt of DEMAND:

2. Adjusted date of receipt of demand due to CORRECTIONS under Rule 60.1(b):

- |  |  |
|--|--|
| 3. <input type="checkbox"/> The date of receipt of the demand is AFTER the expiration of 19 months from the priority date and item 4 or 5, below, does not apply.<br><input type="checkbox"/> The applicant has been informed accordingly. | 6. <input type="checkbox"/> The date of receipt of the demand is AFTER the expiration of the time limit under Rule 54bis.1(a) and item 7 or 8, below, does not apply.                        |
| 4. <input type="checkbox"/> The date of receipt of the demand is WITHIN the time limit of 19 months from the priority date as extended by virtue of Rule 80.5.   | 7. <input type="checkbox"/> The date of receipt of the demand is WITHIN the time limit under Rule 54bis.1(a) as extended by virtue of Rule 80.5.   |
| 5. <input type="checkbox"/> Although the date of receipt of the demand is after the expiration of 19 months from the priority date, the delay in arrival is EXCUSED pursuant to Rule 82.   | 8. <input type="checkbox"/> Although the date of receipt of the demand is after the expiration of the time limit under Rule 54bis.1(a), the delay in arrival is EXCUSED pursuant to Rule 82. |

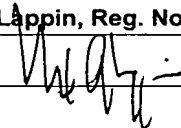
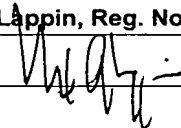
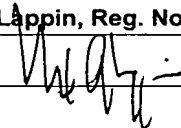
**For International Bureau use only**

Demand received from IPEA on:

## PCT

## FEE CALCULATION SHEET

## Annex to the Demand

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">International application No.</td> <td style="width: 50%;">PCT/US04/41463</td> </tr> <tr> <td>Applicant's or agent's file reference</td> <td>IVAL-218PC (56327-358)</td> </tr> </table>	International application No.	PCT/US04/41463	Applicant's or agent's file reference	IVAL-218PC (56327-358)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="height: 40px; vertical-align: top;">For International Preliminary Examining Authority use only</td> </tr> <tr> <td style="height: 100px; vertical-align: top;">Date stamp of the IPEA</td> </tr> </table>	For International Preliminary Examining Authority use only	Date stamp of the IPEA		
International application No.	PCT/US04/41463								
Applicant's or agent's file reference	IVAL-218PC (56327-358)								
For International Preliminary Examining Authority use only									
Date stamp of the IPEA									
Applicant <b>DVM PHARMACEUTICALS, INC.</b>									
<b>CALCULATION OF PRESCRIBED FEES</b>  1. Preliminary examination fee ..... <span style="float: right; border: 1px solid black; padding: 2px 10px;">600.00 P</span>  2. Handling fee ( <i>Applicants from certain States are entitled to a reduction of 75% of the handling fee. Where the applicant is (or all applicants are) so entitled, the amount to be entered at H is 25% of the handling fee.</i> ) ..... <span style="float: right; border: 1px solid black; padding: 2px 10px;">157.00 H</span>  3. Total of prescribed fees Add the amounts entered at P and H and enter total in the TOTAL box ..... <span style="float: right; border: 1px solid black; padding: 2px 10px;">757.00</span> <div style="clear: both;"></div> <div style="text-align: right; margin-top: 5px;"> <span style="border: 1px solid black; padding: 2px 10px;">TOTAL</span> </div>									
<b>MODE OF PAYMENT</b>  <table style="width: 100%;"> <tr> <td><input checked="" type="checkbox"/> authorization to charge deposit account with the IPEA (see below)</td> <td><input type="checkbox"/> cash</td> </tr> <tr> <td><input type="checkbox"/> cheque</td> <td><input type="checkbox"/> revenue stamps</td> </tr> <tr> <td><input type="checkbox"/> postal money order</td> <td><input type="checkbox"/> coupons</td> </tr> <tr> <td><input type="checkbox"/> bank draft</td> <td><input type="checkbox"/> other (<i>specify</i>):</td> </tr> </table>		<input checked="" type="checkbox"/> authorization to charge deposit account with the IPEA (see below)	<input type="checkbox"/> cash	<input type="checkbox"/> cheque	<input type="checkbox"/> revenue stamps	<input type="checkbox"/> postal money order	<input type="checkbox"/> coupons	<input type="checkbox"/> bank draft	<input type="checkbox"/> other ( <i>specify</i> ):
<input checked="" type="checkbox"/> authorization to charge deposit account with the IPEA (see below)	<input type="checkbox"/> cash								
<input type="checkbox"/> cheque	<input type="checkbox"/> revenue stamps								
<input type="checkbox"/> postal money order	<input type="checkbox"/> coupons								
<input type="checkbox"/> bank draft	<input type="checkbox"/> other ( <i>specify</i> ):								
<b>AUTHORIZATION TO CHARGE (OR CREDIT) DEPOSIT ACCOUNT</b> <i>(This mode of payment may not be available at all IPEAs)</i>  <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> Authorization to charge the total fees indicated above.   <input checked="" type="checkbox"/> (<i>This check-box may be marked only if the conditions for deposit accounts of the IPEA so permit</i>) Authorization to charge any deficiency or credit any overpayment in the total fees indicated above.             </td> <td style="width: 50%; vertical-align: top;"> IPEA/ <u>US</u>  Deposit Account No.: <u>50-1133</u>  Date: <u>11 October 2005</u>  Name: <u>Mark G. Lappin, Reg. No.: 26,618</u>  Signature: <u></u> </td> </tr> </table>		<input checked="" type="checkbox"/> Authorization to charge the total fees indicated above.  <input checked="" type="checkbox"/> ( <i>This check-box may be marked only if the conditions for deposit accounts of the IPEA so permit</i> ) Authorization to charge any deficiency or credit any overpayment in the total fees indicated above.	IPEA/ <u>US</u> Deposit Account No.: <u>50-1133</u> Date: <u>11 October 2005</u> Name: <u>Mark G. Lappin, Reg. No.: 26,618</u> Signature: <u></u>						
<input checked="" type="checkbox"/> Authorization to charge the total fees indicated above.  <input checked="" type="checkbox"/> ( <i>This check-box may be marked only if the conditions for deposit accounts of the IPEA so permit</i> ) Authorization to charge any deficiency or credit any overpayment in the total fees indicated above.	IPEA/ <u>US</u> Deposit Account No.: <u>50-1133</u> Date: <u>11 October 2005</u> Name: <u>Mark G. Lappin, Reg. No.: 26,618</u> Signature: <u></u>								